

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 378 OF 2005

Bharat Atmaram Suryavanshi..... Applicant.

Versus

The State of Maharashtra & Anr.. Respondents.

Mr. M.S.Mohite with Mr. H.E.Palve for the Applicant.

Mr. Rajesh More, APP for State.

Mr. Vinod Jadhav for Respondent No.2.

CORAM : V.R. KINGAONKAR, J.

DATED : 21ST APRIL, 2006.

P.C.:

Admit. By consent, the revision application is taken up for final hearing forthwith.

2. Respondent No.2 filed a complaint for offence punishable under Sections 420, 503, 504 and 506 of the Indian Penal Code. The learned Magistrate was pleased to dismiss the Complaint at the outset against which

order a revision was preferred. The learned Additional Sessions Judge, Karad, allowed the revision application and directed the Judicial Magistrate to issue process against the original Accused No.2 - Bharat Atmaram Suryavanshi. It is this order of the learned Additional Sessions Judge which is the subject matter of challenge in the present revision application.

3. It is well settled that revisional court cannot reappreciate the evidence and is required to consider the matter within the scope of Section 397 of the Criminal Procedure Code. The learned Additional Sessions Judge appears to have considered the documentary evidence on record. The learned Additional Sessions Judge has observed that in the Sale Deed there is omission about the encumbrances and loan charge and that itself is indicative of intention of the Accused to dupe the Complainant.

4. The learned Additional Sessions Judge could have reconsidered the available record in order to find out whether the order passed by the learned Magistrate is proper, correct and legal. However, the learned Additional Sessions Judge should not have superimposed

his finding about issuance of the process against Accused No.2 and direct the learned Magistrate to issue such process. The revision application was against the order of dismissal of the Complaint under Section 203 of the Criminal Procedure Code. The learned Additional Sessions Judge could have quashed the said order instead of directing issuance of process and should have left it open to the discretion of the Magistrate to consider the material placed before it. Instead, the learned Additional Sessions Judge has recorded finding regarding the sufficiency of material to proceed against the Accused. The approach of the learned Additional Sessions Judge appears to be improper.

5. Under the circumstances, I am inclined to allow the present revision application and direct rehearing of the application by the learned Additional Sessions Judge by quashing the impugned order as against Accused No.2. The impugned order as against Accused No.2 is, accordingly, set aside and the learned Additional Sessions Judge is directed to give fresh hearing to the parties and decide the revision application which stands restored to his file. The observations made by this Court or under the impugned

order shall not be considered while deciding the matter afresh.

6. The Revision Application is hereby disposed of. There shall be no order as to costs.

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